

IN THE FAMILY COURT OF JEFFERSON COUNTY, WEST VIRGINIA
IN RE THE MARRIAGE OF:

SANDRA KAY CREA

Petitioner,

and

CIVIL ACTION NO. 06-D-123

RICHARD CREA,

Respondent.

RECEIVED
JAN 25 2007
JEFFERSON COUNTY
CIRCUIT COURT

FINAL DIVORCE ORDER

This matter came before the Court December 21, 2006, upon the papers, pleadings and orders filed herein; upon the Petitioner's duly filed and served Petition for Divorce; upon the Respondent's duly verified Answer and Counterclaim admitting irreconcilable differences; upon the appearance before Judge William T. Wertman, Jr., of the Petitioner, in person and by her counsel, Brian McAuliffe, and the Respondent, in person and by his counsel, Christopher Prezioso.

I. Jurisdiction and Venue

1. The Petitioner has been a bona fide resident and domiciliary of Jefferson County, West Virginia, and has been a resident of West Virginia for more than one (1) year prior to the institution of this action. The present address of the Petitioner is 112 E. 7th Avenue, Ranson, West Virginia.

2. The Respondent, Richard Crea, is a resident of Jefferson County, West Virginia. The current address of the Respondent is 67 Kimberwicke Drive North, Charles Town, Jefferson, West Virginia.



3. Jurisdiction and venue are proper in this Court

II. Facts Relating to Date of Marriage, Date of Separation and Children

4. The Petitioner and Respondent were duly and legally married at Ranson, in Jefferson County, West Virginia, on July 7, 1979. The parties have separated on prior occasions and have filed prior actions seeking the dissolution of their marriage. The Petitioner and Respondent last lived and cohabited together as husband and wife on January 20, 2004, at 67 Kimberwicke Drive, Charles Town, West Virginia.

5. The Petitioner and the Respondent are both over the age of (18) eighteen years.

6. Neither the Petitioner nor the Respondent is a member of the military services of the United States or any of its allies, and is not an infant, incompetent or incarcerated convict.

7. There are two (2) children born of the marriage, neither of whom is a minor child. Neither party is seeking child support. There are no custodial issues relating to the children.

III. Real Estate

8. The Petitioner and Respondent acquired real estate during the marriage located at 67 Kimberwicke Drive North, Charles Town, West Virginia, the marital residence. This property is occupied by the Respondent and by one of the adult children of the parties, Richard M. Crea, II. The Petitioner lives with her father and the parties' second adult child, Kristina M. Crea.

9. Previously, on June 30, 2004, the parties sold another parcel of real estate located at 111 Valley Branch Drive, Ranson, West Virginia and divided the net proceeds equally. Both parties agree they each received a sum equal to \$24,548.26.

10. The Respondent seeks to have the marital residence refinanced and to pay to the Petitioner her equity in the property. The parties agreed to an appraisal of the property. This

appraisal was completed, and the marital home located at 67 Kimberwick Drive North, Charles Town, WV 25414 has been appraised at the amount of \$312,000.00.

11. The Respondent submits in the Pre-Trial Memorandum as follows, which was not refuted: amount owed on the marital home is \$156,486.06 as of July 3, 2006, based upon the statement of July 3, 2006, of US Bank Home Mortgage. As of that date the monthly payment was \$1,259.41 consisting of principal and interest of \$1,039.44, a tax escrow payment of \$132.59, an insurance escrow payment of \$55.47 and a shortage payment of \$31.91. That on July 3, 2006 the Respondent paid \$1,259.41 and \$24.28 toward principal over and above the required payment of \$1,259.41, a total of \$1,283.69. That of the July 3, 2006 payment, \$190.64 and \$24.28 represented a payment to principal, \$848.40 represented a payment to interest, and \$219.97 represented a payment to insurance and tax escrows. (Statement July 3, 2006 US Bank Home Mortgage and Respondent's Financial Form Page 6). That the payments made for August, September, October, November and December of 2006 have reduced the principal in the amount of at least \$214.92 per month for a total of \$1,074.60. The approximate principal balance is \$155,446.62.¹ Based upon the appraised value, the parties equity in the home may reasonably be estimated to be \$157,553.38. Each parties share of the equity would be \$78,776.69.

IV. Motor Vehicles

12. The motor vehicles of the parties shall be awarded as follows:

(a) There is a 2004 Pontiac Aztec motor vehicle acquired on April 7, 2006, valued at

¹ The Petitioner testified that based upon recent house sales that she was able to locate, that she felt that the actual fair market value is around \$350,000.00. This is also the approximate figure that the Respondent has given in the past as the value of the home, although he has testified that he believes the home has gone down in value.

that time at \$12,523.09. This vehicle is financed through the NSF Federal Credit Union, Arlington Virginia (Loan Number 8468200-31) the sole borrower is Richard M. Crea and the vehicle is titled in the name of Richard M. Crea. Payments are in the amount of \$132.00 bi-weekly. The Respondent has had the use of this vehicle. (NSF Federal Credit Union "Loanliner" statement April 7, 2006.) The Respondent shall have this vehicle, which is his separate property, and be responsible for the payment of the debt on it.

(b) There is a 2002 Hyundai which is valued by the Respondent-Husband as of May 12, 2006 at \$7,000.00 and by the Petitioner-Wife at \$5,000.00 as of March 24, 2006. The Petitioner-Wife has had the use of this vehicle. There is no debt owed on this vehicle. (Petitioner's and Respondent's Financial Forms.) The Petitioner wife shall have this vehicle, which she has traded in on a newer Hyundai. Her receiving asset value of \$7,000.00 for this vehicle shall be credited against her share of the proceeds from sale of the marital home.

(c) There is a 1990 Oldsmobile motor vehicle which is valued by the Petitioner-Wife at \$500.00 as of March 24, 2006, but which has not been identified or valued by the Respondent-Husband. (Petitioner's and Respondent's Financial Forms.) The parties agree this vehicle has negligible value. The Petitioner shall have this vehicle.

(d) There is a 1999 Ford Taurus motor vehicle which is valued by the Respondent-Husband as of May 12, 2006 at \$3,009.77 and upon which monthly payments are made in the amount of \$64.00 to NSF Federal Credit Union on a balance as of April 4, 2006 of \$3,059.21. (Statement NSF Federal Credit Union April 4, 2006 and Respondent's Financial Forms.) The disbursement date for the loan is April 4, 2006 and the first payment date is May 8, 2006. The Respondent shall have this vehicle and shall be responsible for the payments on the vehicle. The

vehicle is assigned no value by agreement of the parties. The Respondent shall also receive the Transam, on which nothing is owed, and which is assigned no value by agreement of the parties.

V. Spousal support.

13. Both the Petitioner and the Respondent seek an award of spousal support. The parties agreed at trial to file with the Court copies of their most recent pay stubs for the purpose of verifying the current income of the parties.

14. The Petitioner's pay stub from 12/22/06 shows gross income through 12/10/06 of \$27,195.65 with deductions of \$7,765.36. Her gross income, is, therefore, \$2402.44 per month, and her net income is \$1716.46 per month.

15. The Respondent's most recently filed pay stub shows an increase in pay, consistent with his testimony, to a gross pay of \$60,000.00 per year (\$5,000.00) per month, with a net pay of \$3,952.54 per month. This is a monthly income of \$3,952.54. This is an increase in net pay of approximately \$300.00 per month from the time Respondent filed his financial statement, an amount potentially available as spousal support to the Petitioner. The Petitioner's health insurance has increased a small amount during that period.

16. Previously, the parties stated to the Court the amount of their regular monthly expenses. The Petitioner has reported expenses of \$1,930.00 and has also a car payment which was not an expense at the time of the hearing before the Court in July 2006. The husband has reported expenses of \$5,030.00. The husband is seeking to refinance the marital home to purchase the interest of the wife. The husband's housing expenses will increase to an amount in excess of \$2,000.00 if he refinances the marital home.

17. This is a long term marriage well in excess of twenty years and there is a marked

disparity in income between the Petitioner and the Respondent. The Petitioner is employed by the Jefferson County Board of Education in a paraprofessional position as a teacher's aide. The Petitioner has training as a nurse in the distant past, but has never held a nursing license or practiced as a nurse. The Petitioner is fifty years of age and testified that she does not have any realistic prospect of improving her income or changing jobs. The Petitioner further testified that she is unwilling to leave her present employment because she receives health benefits and retirement benefits. A change in employment could enable her to increase her income, albeit not substantially. The Respondent husband is employed as an IT specialist at a financial institution and has in the past operated a computer business. The Respondent did not testify as to any limitations upon his future earnings or job change options, nor did he offer any specific testimony in support of a spousal support claim. Neither party testified to any health problems that would affect their ability to sustain employment.

VI. Debts

18. The parties have disagreed as to the extent that the existing credit card debt is marital debt or separate debt. The husband has listed credit card debt of \$44,730.89.

	<u>Owed</u>	<u>Monthly Payment</u>
Chase Master Card	\$16,404.52	\$475.00
GE	\$2,085.28	\$100.00
Sears	\$8,093.06	\$160.00
Capital One	\$5,097.74	\$250.00
Macy's	\$3,514.73	\$200.00
American Express	<u>\$9,535.56</u>	<u>\$250.00</u>

<u>Owed</u>	<u>Monthly Payment</u>
Total: \$44,730.89	\$1,435.00

19. At trial the Respondent was unable to produce any documentary evidence that any of the identified debt was marital debt or even existed at the time of separation. Further, the Respondent testified that his credit card indebtedness has increased to near \$50,000.00. The Respondent did not offer any explanation as to the purposes for which the debt was incurred or as to how the debt was a benefit to the marriage or to the Petitioner. The Respondent did testify that he believed that the marital debt was in the range of \$21,000.00, estimating the amount of debt incurred on a monthly basis for a period of time prior to separation (\$600.00 per month for 36 months). The Petitioner testified that she was aware Respondent had credit cards during the marriage, but she did not know how many he had or how much he was paying on them.

20. The wife has listed credit card debt of \$2,526.00 on her financial form and has indicated that amount has increased slightly in her pre-trial memorandum.² The amounts listed in her financial statement form reflect as follows:

² The Petitioner-Wife has obtained a credit report dated 10/26/06 which she will testify reflects an installment indebtedness of \$16,132 for the purchase of a motor vehicle and a revolving account indebtedness of \$3,692.00 of which:

\$662.00 is an American Express bill for an account opened July 2006,
\$960.00 is a Capitol One account in the amount of opened August of 1999,
\$46.00 is a CBUSASEARS account opened June of 1999,
\$20.00 is a Chase Circuit City account opened March 2006,
\$740.00 is a Chase Bank USA, NA account opened July 1999,
\$109.00 is a Dell Financial Serv. account opened September 2006,
\$367.00 is a Discover Financial Serv account opened June of 1999, and
\$513.00 is a FIA MBNA account opened October of 2006.

Capitol One	\$497.22
Chase	\$677.00
Bankcard	\$658.58
Chase Visa	\$325.00
Discover Card	\$369.19
Total:	\$2,526.99

The wife testified that the indicated credit card debt was a marital debt and existed at the time of the separation. The Respondent did not dispute this allegation at the time of final hearing.

21. The burden for showing that contested debt standing solely in the name one of the spouses: (a) was incurred prior to separation, (b) was for a marital purpose and (c) is marital debts rests with the party asserting that claim. The Respondent in this case asserts a contested claim based on an estimate devoid of any written documentation whatsoever, and he has not sustained his burden. The credit card debt in the name of the husband shall be treated, therefore, as his separate debt.

22. On the other hand, the wife has offered unrebutted testimony that the credit card debt in her name is marital debt. Had the Respondent contested this allegation, the Petitioner would have faced the same standard as the Respondent. In the absence of a challenge to the claims of the Petitioner, the Petitioner has satisfied her burden in this regard. The credit card debt of the Petitioner spouse is marital debt.

VII. Pensions

23. The Petitioner has a pension with the Jefferson County School Board and has

provided to the Court a summary of this benefit. At hearing the value of this pension was agreed to and the Respondent shall be entitled to a credit for one-half of the agreed to amount. This is calculated as follows. The Petitioner's benefit with the State of West Virginia Teacher's Defined Contribution Retirement System for the period from October 1, 2003 to December 31, 2003 shows that the Petitioner-Wife was entitled to \$6,223.13 in her employee account and \$3,369.42 in the vested employer account as of January 2004 for a total of \$9,590.00. The Respondent is entitled to a credit of one-half of that amount, or \$4795.00.

24. The Respondent testified that he did not receive pension benefits when he left the employ of the Bank of Charles Town.

VIII. Household belongings, insurance, and bank stock.

25. The Petitioner has offered into evidence with the Court an itemized statement of the value of the household goods presently in the possession of the Respondent. The parties agreed the Petitioner shall be entitled to a credit for \$5,000.00, in exchange for Respondent retaining those goods. In addition, Petitioner retains the insurance policy with a cash surrender value of \$2,000. Respondent has and shall retain 12 to 16 shares of Bank of Charles Town stock valued at \$400.00.

IX. Reduction in mortgage principal.

26. The Respondent seeks a credit for payments toward the mortgage principle. However, the Respondent has had the use of the marital residence which is in excess of 2,000 square feet while the Petitioner has resided in very modest circumstances with her father. The Respondent also had the use of the household goods in the home, and received the tax benefit of the mortgage interest payment, while paying no voluntary support. The Petitioner testified that

she made payments of the electric bill in the amounts of \$154.00, \$383.70, and \$157.79 and the water bill in the amount of \$87.30 and \$28.90, which Respondent denies. On balance, it would not be equitable to award to the Respondent a credit for the payment of mortgage payments, particularly given the substantial rental value of the residence.

X. Disposition of the marital residence.

27. Based upon the testimony of the parties it is apparent that the Respondent has incurred extremely high credit card debts without any showing of the reason for the debt or of any benefit to the marriage. The Respondent has further testified that he has the ability to borrow approximately \$280,000.00 on the marital home. This would permit the Respondent to both pay to the Petitioner her share of the equity in the home and to pay off most if not all of the credit card debt which prevents the Court from entering an award of alimony. The end result would be inequitable, insofar as the Respondent would own the marital home, would have little or no debt other than the debt on the home and would have no obligation to pay spousal support. The Petitioner has a reasonable life expectancy of approximately another 28 years. At even a modest sum of \$300.00 per month the amount of alimony avoided by the Respondent would be equal to a total of \$100,800.00. The Respondent should not benefit from voluntarily incurring excessive debt, and the Petitioner should not be penalized for the Respondent having done so. Sale of the home would enable Respondent to relieve himself of his current obligation to pay over \$1400.00 per month in credit card payments, as reflected in his financial statement. The equitable solution under the circumstances is to have the marital residence sold and the equity of the parties divided equally, subject to the adjustments noted. This will permit the Respondent to reduce or eliminate his credit card debt and still have funds with which to meet expenses and pay spousal support.

Accordingly, the marital residence shall be sold and the Petitioner shall be awarded spousal support of \$600.00 per month.

IT IS THEREFORE ORDERED:

1. The Petitioner shall be granted a divorce from the bonds of matrimony from the Respondent on the grounds of irreconcilable differences.
2. The parties shall be awarded the motor vehicles in their possession as indicated above.
3. The Respondent shall be given a credit for one-half of the pension of the Petitioner as indicated above.
4. The Petitioner shall be granted a credit for her share of the household goods of the parties as indicated above.
5. The marital residence shall be sold and the parties shall be awarded one-half of the equity in the home, subject to the credits of each above. (Petitioner is receiving assets of \$18,590.00: \$7,000.00 Hyundai, \$2,000.00 insurance cash surrender value, and her \$9,590.00 pension. This amount, less her assumption of \$2526.99 marital debt leaves her receiving net assets which equal \$16,063.01. Petitioner is receiving assets of \$5,400.00: \$5,000.00 household items, and 12-16 stocks with \$400.00 total value, and he assumes no proven marital debt.) Accordingly, following sale of the home, Respondent shall receive \$5,331.50 from the net sale proceeds (\$16,063.01 minus \$5,400.00 equals \$10,663.00 divided by 2 equals \$5,331.50), after which the remaining net sale proceeds shall be divided equally between the parties. The parties shall take all reasonable and necessary steps to list the residence for sale with a mutually agreed upon realtor expeditiously and without undue delay. The house shall be listed at a mutually

agreed price. If the parties cannot agree on a listing price, the parties shall list the property for sale at the price recommended by the chosen realtor. If the parties cannot agree on a realtor, Petitioner shall provide Respondent in writing the names of at least 3 realtors, from which Respondent shall choose one.

6. The Petitioner shall be awarded spousal support in the amount of \$325.00 per month, until the death of either party or the remarriage of the Petitioner, payable beginning effective May 1, 2007, subject to judicial modification.

7. The Respondent shall be responsible for the debt in his name.

8. The Petitioner shall be responsible for the debt in her name, including that debt listed hereinbefore by Petitioner.

9. The Petitioner is hereby restored to her maiden name of **Sandra Kay Longerbeam** (date of birth: **October 17, 1955**).

10. Each party shall be responsible for their own attorneys fees and costs of suit.
Objection of both parties to all adverse rulings is noted.

THIS IS A FINAL ORDER WHICH ANY PARTY MAY APPEAL. AN APPEAL MUST BE FILED IN THE CIRCUIT CLERK'S OFFICE IN THIS COUNTY. A PETITION FOR APPEAL TO THE CIRCUIT COURT MAY BE FILED BY EITHER PARTY WITHIN 30 DAYS OF THE DATE OF ENTRY OF THIS FINAL ORDER.

TO APPEAL DIRECTLY TO THE SUPREME COURT, BOTH PARTIES MUST FILE, WITHIN 14 DAYS OF THE DATE OF ENTRY OF THIS FINAL ORDER, A NOTICE OF INTENT TO APPEAL AND WAIVER OF RIGHT TO APPEAL TO CIRCUIT COURT. IF ONLY ONE PARTY TIMELY FILES A NOTICE OF WAIVER

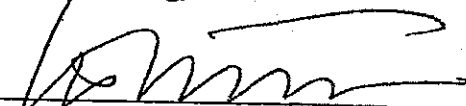
AND APPEAL TO THE SUPREME COURT, THE APPEAL WILL BE TREATED AS A PETITION FOR APPEAL TO THE CIRCUIT COURT.

Objection of both parties to all adverse rulings is noted.

It appearing that nothing further remains to be done in this matter, it is ORDERED that this matter be retired from the docket and placed among causes ended. The Clerk shall provide attested copies of this Order to Brian McAuliffe, Esq., 114 S. Maple Ave., Martinsburg, WV 25401, and to Christopher J. Prezioso, Esq., 211 W. Burke St., Martinsburg, WV 25401.

ENTER:

January 19, 2007



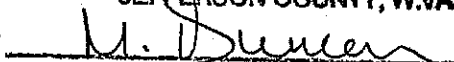
WILLIAM T. WERTMAN, JR.
FAMILY COURT JUDGE

2 cc
B. McAuliffe
C. Prezioso
mus 1/26/07

A TRUE COPY
ATTEST:

PATRICIA A. NOLAND
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, W.VA.

BY


DEPUTY CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

SANDRA KAY CREA

RECEIVED

Plaintiff/Petitioner,

MAR 29 2007

vs.

JEFFERSON COUNTY
CIRCUIT COURT

Civil Action No. 06-D-123

Honorable Thomas W. Steptoe, Jr.

RICHARD CREA,

Defendant/Respondent.

ORDER REFUSING PETITION FOR APPEAL

This matter came on for consideration this 29th day of March 2007, upon a Petition for Appeal from Family Court Final Order having been filed in the Office of the Circuit Clerk on January 19, 2007.

The Court, upon review of the Petition, and all exhibits and other supporting materials submitted therewith, does find that the Appeal sought is **REFUSED**.

This is a final order. Any party aggrieved hereby may petition the West Virginia Supreme Court of Appeals for appeal of this Order.

ACCORDINGLY, it is all so **ORDERED**

The Court notes all parties' exceptions and objections to all adverse rulings.

The Clerk shall **ENTER** this **ORDER**, and shall forward an attested copy to pro se parties and counsel of record, And Family Court Judge

ENTERED this 29th day of March 2007.

A TRUE COPY
ATTEST:

Honorable Thomas W. Steptoe, Jr.
Judge, 23rd Circuit

PATRICIA A NOI AND
CLERK, CIRCUIT COURT
JEFFERSON COUNTY W.VA.

BY M. Deneen
DEPUTY CLERK

EXHIBIT

2

3cc
B. McAuliffe
C. Preziofs
Judge Jackson
mws 3/30/07